

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MICHAEL P. AND SHELLIE GILMOR,  
et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,  
et al.,

Defendants.

Case No. 10-0189-CV-W-ODS

**MOTION FOR ORDER APPROVING VOLUNTARY DISMISSAL OF  
DEFENDANT UNITED MORTGAGE CB, LLC WITHOUT PREJUDICE**

Plaintiffs respectfully move the Court for an Order permitting them to voluntarily dismiss Defendant United Mortgage CB, LLC (“UMCB”) from this lawsuit without prejudice on the following grounds: (1) UMCB is alleged to hold but a single loan in this case, specifically the second mortgage loan that Preferred Credit Corporation made to Michael P. and Shirley J. Graves on or about November 21, 1997; (2) although it filed an Answer to Plaintiffs’ Seventh Amended Complaint on May 18, 2011 (Doc. 288), UMCB is no longer represented by counsel in this action, the Court having permitted its counsel to withdraw from the case in November 2011 (Doc. 439); (3) since the entry of the Order permitting its counsel to withdraw, UMCB has not retained substitute counsel or otherwise sought to participate in this action, and it is believed that UMCB is no longer in business and is now without assets or ability to pay;<sup>1</sup> (4) Class Counsel has communicated with Class Members Michael P. and Shirley J. Graves and the dismissal of UMCB as requested herein would be consistent with that communication; and (5) Class Counsel

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<sup>1</sup> See Doc. 437, Motion to Withdraw, ¶¶3, 4; Doc. 438, Affidavit of Arthur E. Kechijian, Manager of UMCB, ¶¶4, 5, 7.

has apprised Patricia Brown, the Panel Trustee who administered the Graves' 2002 Chapter 7 bankruptcy, of the Graves' claims against UMCB and the Panel Trustee has consented to the dismissal of UMCB.<sup>2</sup>

The dismissal of UMCB without prejudice will be appropriate. Plaintiffs have not previously dismissed their claims against UMCB. UMCB has not pleaded any counter- or cross-claims in this action; nor have any such claims been asserted against UMCB. Plaintiffs will continue to pursue this case and their claims against Preferred Credit on behalf of the Graves and the rest of the Class. For each of these reasons, and based on the grounds set out above, the voluntary dismissal of UMCB will be "fair, reasonable, and adequate" and promote judicial economy. Fed.R.Civ.P. 23(e)(2). No Class Members other than the Graves will be affected by the dismissal of UMCB. The dismissal of UMCB from this case will not prejudice or otherwise adversely affect the members of the Class or Defendants (all of which have settled with Plaintiffs, with the exception of Preferred Credit). Accordingly, there is no need for the Court to require any additional notice of the voluntary dismissal. The instant motion and filing of record will suffice.

WHEREFORE, Plaintiffs respectfully move the Court for an Order permitting them to voluntarily dismiss Defendant United Mortgage CB, LLC ("UMCB") from this lawsuit without prejudice.

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<sup>2</sup> If the Court desires, Plaintiffs' Counsel will disclose the substance of their communications with the Graves and the Panel Trustee, *in camera*.

Dated: February 14, 2013

Respectfully Submitted,

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

By /s/ Kip D. Richards

R. Frederick Walters – Mo. Bar 25069  
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ATTORNEYS FOR PLAINTIFFS  
AND CLASS COUNSEL

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 14<sup>th</sup> day of February, 2013, I electronically filed the above and foregoing document with the Clerk of Court of the Western District of Missouri using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants. In addition, a copy was served by U.S. mail, First-Class Postage Prepaid, to:

Michael P. and Shirley J. Graves  
P.O. Box 82  
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Patricia A. Brown  
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Arthur E. Kechjian, Manager  
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**Defendant United Mortgage C.B., L.L.C.**

/s/ Kip D. Richards